

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3269 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

DILIPBHAI NATHJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioners
Mr.P.G.Desai, Ld.PUBLIC PROSECUTOR for Respondent No. 1
SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 09/07/97

ORAL JUDGEMENT

Learned Advocate Mr.Bharat S.Patel has argued on
behalf of the original-accused-petitioners that
Annexure-A complaint bearing CR No.240/94 of Sayajiganj
Police Station Baroda be quashed and set aside. In

response to the Rule on behalf of the State and other respondents Mr.P.G.Desai, ld.P.P. has appeared. Mr.Patel tried to convey that the entire complaint is required to be quashed. I have deliberately mentioned that the effort was to get the entire complaint quashed because the complaint, a copy of which is produced at Annexure-A refers to an offence under Sec.147(1)(d) of the Co-operative Societies Act, 1961. The action contemplated seems to be also under Sec. 409,418, 421, read with Sec. 34 of Indian Penal Code because that is the letter addressed to the learned Chief Judicial Magistrate, Baroda on 10-6-1997 by Sayajiganj Police Station, Baroda, so that over and above the said offence under Sec.147(1)(d), offence under these Sections can also be added. With regard to the offences under the Indian Penal Code, it is quite clear that if the averments as to making investment in a Company by the Co-operative Society for which there is express prohibition in the Act is indulged into, the offence contemplated by Sec.409,418, 421 read with Sec.34 could not be ruled out *prima facie*. These observations are made only for the purpose of the disposal of this application. They are not to be treated as final, nor are they to be made use of either by the prosecution or by the defence if and when occasion arises for the trial.

2. Coming back to the offence under Sec.147(1)(d), the provisions of Sec.149, Sub-Sec.3 clearly contemplates opportunity to be given to the office bearers of hearing before the complaint can be lodged for contravening the provisions relating to investment. Sec.71 makes mandatory provision as to the investment of funds of the society. In the transaction involved in the present case, these statutory directions are obviously violated, but as contemplated by Sec.147(1)(d) read with Sec.149, office bearers of the society are to be given an opportunity of explaining the violation. No prosecution can be launched without sanction and no sanction can be given without hearing the concerned officials. Mr.Desai sought time to find out from the record whether any such notice was ever served and whether opportunity contemplated by the said Section was ever given. For this purpose, time was granted. Instructions received by him was to the effect that no such notice was issued.

3. However, inspite of this factual position, Mr.Desai made a submission with regard to the interpretation of sub-Sec.(3) of Sec.149. According to his submission, hearing is to be given provided the sanction is to be accorded by the Registrar of the Co-operative Society.

4. Sanction of the State Government is required for an offence under clause (c) of Sec.(1) of Sec.147 which is not the position here. Clearly, the offence being covered by Sec.147(1)(d), the sanctioning authority will be the Registrar. In respect of both such sanctions, on plain reading of sub-sec.(3), it is clear that the offending party is to be served with a notice and after hearing the party concerned, the sanction is to be accorded. Mr.Desai based his attempt on the following words "by an Officer authorised in this behalf by the State Governemnt by a general or special order". These words occurring at the end portion of sub-Sec.(3), according to Mr.Desai would clearly indicatge that hearing is required to be given only when offence under clause (c) is indicated and not otherwise. According to him, there is no question of State Govt. authorising any Officer by general or special order to hear the party and grant sanction unless it is the State Govt. which is to give sanction. In case of offence under Sec.147(1) other than clause (c) i.e. remaining clauses, when the Registrar is the sanctioning authority, it is he, who can give notice, hear the party and grant sanction, if the submission of the petitioner is accepted. In that event, there is no question of an Officer authorised by the State Government doing it.

5. This submission of Mr.Desai, in my opinion, cannot be accepted. After providing for sanction in connection with two different categories of offences, when in that context the words "such sanction shall not be given" are to be interpreted, it would necessarily mean that sanction required to be given either by the Registrar or by the State can follow only a notice and hearing, that is required to be given.

6. Thus, accepting the submission of Mr.Patel, on behalf of the petitioner, it is directed that so far as the complaint relating to offence under Sec.147(1)(d) is concerned, it shall not proceed further till the notice to the parties are given and sanction is accorded after hereaing them. It is clarified that the complaint for the remaining offences, as set out in the said letter dated 10-6-1997 shall, in no way, be affected by this and shall be proceeded with in accordance with law inspite of this order. The complaint thus shall proceed further for all other offences except for offence under SEc.147(1)(d) of the Co-operative Societies Act, 1961. As and when sanction is granted by the Registrar or by the Officer of the State, as contemplated by latter part of Sub-Sec.(3), the competent Court shall proceed further in connection

with that and in case, sanction is not accorded, there is no question of proceeding against any of the office bearers of the Society for offence under Sec.147(1)(d). Rule is made absolute accordingly.
